

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-2708-2023 (O&M)**

Gujarat Cooperative Milk Marketing Federation

...Petitioner

Versus

Modern Dairies Ltd. and another

...Respondents

Reserved on: 14.07.2026**Pronounced on: 15.07.2026****Pronounced fully/operative part: Fully****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by: Mr. Abhishek Singh, Advocate and
Mr. Arnav Sood, Advocate for the petitioner.

Ms. Savita Bhandari, Advocate for the respondents.

DEEPAK GUPTA, J.

The defendants have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India assailing the order dated 12.01.2023 (*Annexure P-1*) passed by the Commercial Court, Karnal, whereby their application under Order VII Rule 11 CPC seeking rejection of the plaint in a commercial suit bearing No. CS-01-2021 '*Modern Dairies Ltd. vs Gujarat Co-operative Milk Marketing Federation Ltd. & Another*' has been dismissed.

2. The Commercial Court rejected each of the grounds urged by the defendant. Before this Court, however, learned counsel for the petitioners has confined the challenge only to one ground, namely, that the plaint does not disclose any cause of action.

3. Learned counsel for the petitioners submits that the registered trade mark of the plaintiff is "*Mehak Pyaar Ki Swaad Khushiyo Ka*", whereas



the advertisement (Annexure P-3) issued by the petitioners uses the expression "*Apne Pariwar ko Dijiye Khushiyo ka Swaad*". It is argued that in view of Section 17 of the Trade Marks Act, 1999, registration confers exclusive rights only in respect of the trade mark taken as a whole and not in respect of any part thereof. Since the petitioner has admittedly not used the registered trade mark in its entirety, no cause of action for infringement is disclosed in the plaint. Consequently, the plaint deserved rejection under Order VII Rule 11(a) CPC.

4. *Per contra*, learned counsel appearing for the respondent-plaintiff submits that the petitioners have selectively relied upon only one limb of the plaint. Inviting attention to paragraph 5 of the plaint, it is contended that apart from infringement of the registered trade mark, the plaintiffs have specifically pleaded that they conceived, adopted and continuously used the distinctive tagline "*Swaad Khushiyo Ka*" since the year 2011 and that the defendants have dishonestly adopted a deceptively similar expression amounting to passing off and infringement of their proprietary rights acquired by prior user. It is argued that whether such plea ultimately succeeds is a matter of evidence and cannot be examined while deciding an application under Order VII Rule 11 CPC.

5. Having heard learned counsel for the parties, I find no ground to interfere with the impugned order.

6. The scope of enquiry under Order VII Rule 11(a) CPC is well settled. While considering whether a plaint discloses a cause of action, the Court is required to confine itself only to the averments contained in the plaint and the documents relied upon therein. The correctness, truthfulness or ultimate sustainability of those averments is wholly irrelevant at that stage. If on a meaningful reading of the plaint, a bundle of facts giving rise to a right to sue is disclosed, rejection of the plaint is impermissible. It is equally well settled that the plaint has to be read as a whole and not by



dissecting isolated pleadings or reliefs. The Court cannot embark upon an adjudication of the merits of the controversy or examine the probable defence of the defendant while exercising jurisdiction under Order VII Rule 11 CPC.

7. A perusal of the plaint shows that the plaintiffs have not rested their claim exclusively on alleged infringement of the registered trade mark. They have also specifically pleaded that the expression "*Swaad Khushiyo Ka*" was independently conceived and adopted by them as a distinctive tagline, that it has acquired goodwill and distinctiveness by prior and continuous use, and that the defendants have adopted a deceptively similar expression with an intention to ride upon such reputation. The relief clause also seeks injunction in this regard.

8. It is trite that an action for passing off is a common law remedy founded upon prior user and goodwill and is independent of statutory registration. Even an unregistered mark, slogan or tagline may, if it has acquired distinctiveness, furnish a valid foundation for an action in passing off. Whether the plaintiffs are able to establish prior adoption, goodwill, reputation, deceptive similarity or likelihood of confusion are all matters requiring evidence and cannot be prejudged at the threshold.

9. The contention founded upon Section 17 of the Trade Marks Act also does not persuade this Court to reject the plaint. Whether Section 17 defeats the plaintiffs' claim for infringement, whether the impugned expression constitutes use of a part of the registered mark, and whether such use attracts the statutory protection or otherwise are all issues touching the merits of the controversy. Those questions may constitute a substantial defence available to the defendant, but they cannot be converted into a ground for holding that the plaint itself discloses no cause of action. At this stage, the Court is not concerned with the probable success or failure of the suit.



10. Hon'ble Supreme Court has consistently held that a plaint cannot be rejected merely because the Court is of the opinion that the plaintiff may ultimately fail in establishing the claim. So long as the plaint discloses a triable cause of action, the suit must proceed to trial. The distinction between 'absence of a cause of action' and 'failure to prove a cause of action' is necessary to be kept in mind. The former alone attracts Order VII Rule 11(a) CPC.

11. In the present case, the plaint contains clear factual assertions regarding prior user, deceptive similarity and infringement of its trademark. These averments, if assumed to be correct for the limited purpose of Order VII Rule 11 CPC, unquestionably disclose a cause of action requiring adjudication after parties lead evidence. Whether the plaintiffs ultimately succeed or whether the defence based upon Section 17 of the Trade Marks Act is sustainable, are matters to be determined during trial.

12. The Commercial Court has, therefore, rightly declined to reject the plaint. The impugned order neither suffers from any jurisdictional error nor discloses any perversity warranting interference under Article 227 of the Constitution of India.

13. Accordingly, finding no merit in the present revision petition, the same is dismissed. Nothing observed herein shall be construed as an expression of opinion on the merits of the suit, which shall be decided independently on the basis of the evidence led by the parties.

15.07.2026

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

Uploaded on: 15.07.2026